

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DEMARCO MAX VAC CORP.,

Plaintiff,

v.

NORTHWIND AIR SYSTEMS
(a Canadian Corporation) d/b/a DUROVAC
INDUSTRIAL VACUUMS, & JAN
OSTERMEIER INDUSTRIAL VACUUMS
SALES LLC (a Wisconsin Corporation),

Defendants.

Civil Action No. 08-cv-77
Hon. Samuel Der-Yeghiayan
Mag. Judge Maria Valdez

JOINT INITIAL STATUS REPORT

Plaintiff Demarco Max Vac Corp. ("Demarco") by its attorney Jon D. Cohen (lead counsel), Stahl, Cowen, Crowley LLC, and Defendants Northwind Air Systems and Jan Ostermeier Industrial Vacuum Sales LLC (collectively "Durovac") by their attorneys Michael J. Abernathy (lead counsel) and Jeana R. Lervick, Bell, Boyd & Lloyd, hereby submit their joint initial status report. The parties met and conferred by telephone on February 25, 2008 and, in accordance with that meeting, state as follows:

1. Nature of Claims:

Plaintiff alleges Trademark Infringement, Unfair Competition and False Description arising under §§ 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Infringement) and 1125(a) (Unfair Competition and False Description), and for Unfair Business Practice arising under Illinois law. Plaintiff contends that, in large part, these actions arise out of the wrongful use by Defendant of Plaintiff's trademarks and/or confusingly similar trademarks in conjunction with the sale and/or offer of sale of commercial vacuum equipment.

Defendants are to answer the Complaint by March 5, 2008. Defendants intend to deny the assertions made by Plaintiff and further deny that Plaintiff suffered any actual harm. Defendants do not intend to assert counterclaims at this time.

2. Relief Sought by Plaintiff:

Plaintiff has not determined the extent of the damages sought, but is considering statutory damages in conjunction with injunctive relief.

3. Names of Parties Not Served:

Plaintiff is not aware of any parties who have not been served.

4. Principal Legal Issues:

The following is a list of legal issues involved in this case:

- a) Whether Defendants improperly used Plaintiff's "Max-related" trademarks in violation of the Lanham Act;
- b) Whether Plaintiff has rights in its alleged "Max-related" marks; and,
- c) Whether Plaintiff is entitled to damages and/or injunctive relief as a result of any such alleged violation.

5. Principal Factual Issues:

The following is a list of factual issues involved in this case:

- a) Scope and extent of Defendants' alleged trademark infringement; and
- b) Whether Defendants' alleged violations were willful.

6. Pending Motions:

At present, there are no motions pending before the Court.

7. Discovery Requested and Exchanged:

Written discovery requests have not yet been posed by the parties upon their respective opponents.

8. Type of Discovery Needed:

The parties will need discovery on the facts and merits of the case, including but not limited to Plaintiff's claim of right in the "Max-related" marks, and Defendants' alleged use of such marks in commerce, as well as damages and expert discovery. The parties will take written and oral discovery, including exchanging any responsive electronically stored data within the respective party's possession, custody or control.

9. Proposed Dates:

- a) Rule 26(a)(1) Disclosures. The parties agree that Rule 26(a)(1) disclosures shall be made by March 11, 2008.
- b) Fact Discovery Completion. The parties agree that fact discovery shall be completed by October 31, 2008.
- c) Expert Reports and Discovery Completion. The parties agree that Plaintiff shall disclose its expert witnesses and shall file its expert reports, pursuant to Fed.R.Civ.P. 26(a)(2) by August 31, 2008 and Defendants shall disclose their expert witnesses and shall file their expert reports, pursuant to Fed.R.Civ.P. 26(a)(2) by September 30, 2008. Any rebuttal experts shall be disclosed and reports shall be filed within forty-five (45) days of the opposing party's disclosure.
- d) Filing of Dispositive Motions. The parties agree that dispositive motions shall be filed on or before November 31, 2008.
- e) Filing of Final Pretrial Order. The parties respectfully suggest that, because summary judgment motions are likely in this case, this Court not

set a trial date and a date for filing of a final pre-trial order until this Court rules on any summary judgment motions.

10. Estimation of Trial Date:

The parties anticipate that the case will be ready for trial in March 2009.

11. Probable Length of Trial:

The parties anticipate that the trial will take no more than five (5) days to complete.

12. Whether Jury Trial Requested:

Plaintiff has not requested a trial by jury.

13. Whether Settlement Discussions Have Been Held and Outcome:

Discussion as to an early resolution is being addressed by the parties, but Plaintiff contends it may not be in a position to evaluate any settlement proposal nor to make one until discovery in this matter reflects the amount and scope of alleged trademark infringement by Defendants. Defendants would welcome a settlement conference with the Court.

14. Whether the Parties Consent to Proceed Before a Magistrate Judge:

The parties do not unanimously consent to a magistrate judge.

Respectfully submitted,

Dated: February 28, 2008

PLAINTIFF

By: /s/ Jon D. Cohen
One of its Attorneys

Jon D. Cohen
STAHL COWEN CROWLEY LLC
55 West Monroe Street
Suite 1200
Chicago, Illinois 60603
312.641.0060
312.641.6959 (facsimile)

DEFENDANTS

By: /s/Jeana R. Lervick
One of its Attorneys

Michael J. Abernathy
Jeana R. Lervick
BELL, BOYD & LLOYD LLP
Three First National Plaza
70 West Madison Street
Suite 3100
Chicago, Illinois 60602
312.372.1121
312.827.8000 (facsimile)
Attorney No. 90100

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of **Joint Initial Status Report** has been served this 28th day of February, 2008 via ECF filing, courtesy copy via e-mail, to:

Jon D. Cohen
STAHL COWEN CROWLEY LLC
55 West Monroe Street
Suite 1200
Chicago, Illinois 60603

/s/ Jeana R. Lervick
Jeana R. Lervick
BELL, BOYD & LLOYD LLP
70 West Madison Street
Suite 3100
Chicago, IL 60602
(312) 373-1121